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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 535.

PARAGON LAND CORP.,

Petitioner,

v.

JOSEPH P. DAY and BRADLEY DELEHANTY,
Trustees, etc.,

Respondents.

REPLY BRIEF OF PETITIONER.

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Respondents in their brief make certain statements of fact which are not supported by the record and by reason thereof it is necessary to briefly refer to same.

The offer made by Levingson on behalf of a syndicate referred to in respondents' brief (p. 4) did not provide for the payment of \$90,000 in cash as therein claimed and in addition this original offer has no significance as appears from the affidavit of the deceased trustee Crane wherein it is said (R. 12, Vol. I):

"It is not necessary to state the terms of this proposal at this time, because it merely initiated negotiations which were thereafter carried on."

At page 4 of respondent's brief they omit to state that the Judge presiding at a Special Term of the Supreme Court stated that "if the terms, conditions and form of the contract are satisfactory to the Court, an order would be entered approving the same" (R. 13, Vol. I).

The subsequent written contract between the trustees as sellers and the petitioner as purchaser was completely different from the so-called Levingson offer which initiated the negotiations and this is conceded in the record, although the respondents' brief tries to create a contrary impression.

The respondents in their brief would have this Court believe that they own the real estate which is referred to herein, whereas the respondents know that the County of Nassau heretofore obtained a judgment against the respondents wherein it was adjudicated that the said County of Nassau became the owner of the property by reason of the tax deeds received by it.

ARGUMENT.

1(a) The Constitution Is Protection Against An Unlawful Method Of Procedure In State Courts Which Deprives A Person Of His Property Without Due Process Of Law. The Petitioner Never Sought An Adjudication On The Merits.

The respondents under Point III contend that the Constitution does not undertake to control State Court methods of procedure and that the petitioner sought an adjudication on the merits. Both statements are incorrect.

When the method of procedure in a State Court is contrary to the law of that State, the Constitution of the United States is protection against the deprivation of a person's property rights without due process of law. The cases cited by the respondents involved specific statutory procedure (*Iowa Central R. Co. v. Iowa*, 160 U. S. 389; *Cincinnati St. Ry. v. Snell*, 193 U. S. 30).

The petitioner from the very inception objected to the jurisdiction of the New York State Supreme Court and throughout the proceedings insisted upon its constitutional rights and merely stated the facts in its affidavit to buttress its claim that there was no jurisdiction.

1(b) The Statutory Proceeding For The Reorganization Of A Certificated Mortgage Under The Schackno Act And Mortgage Commission Act Terminated Upon The Entry Of The Final Order Approving The Plan And Appointing The Trustees.

The subsequent sale of real property by the trustees which they did not own, was not an incident in the original reorganization proceeding and the New York Supreme Court did not have statutory jurisdiction with respect to same.

The trustees had applied to the Supreme Court for instructions with respect to the trust estate, but such an application is separate and apart from the original statutory proceedings wherein they had been appointed.

The respondents contend that the provisions of the final order in the reorganization proceeding wherein it is said that the "Court, having assumed jurisdiction of this proceeding, shall retain jurisdiction thereof until the complete liquidation of the trust estate, and the termination of the trust" (R. 91, Vol. I) is the basis for the Court's jurisdiction. This argument is contrary to law.

Special Term of the Supreme Court of the State of New York for reorganizations under the said Acts is a statutory Court whose powers is limited by the said statutes.

People (Title & Mtge. Guarantee Co.), 265 N. Y. 69;

Matter of Lawyers Mortgage Co., 277 N. Y. 244;
Culver Contracting Company v. Humphrey, 268 N. Y. 26, 33, 34;

Finlay v. Finlay, 240 N. Y. 429, 432;

Matter of New York Title & Mtge. Co., 257 App. Div. 19 (appeal dismissed 281 N. Y. 829);

Mittleman v. President, etc., 248 App. Div. 79 (aff. no op. 272 N. Y. 632).

The purpose of the two Acts was solely to make it possible for great numbers of certificate holders to act as a unit in the management of mortgages deposited as security to certificates without the consent of all and to furnish the machinery for bringing about and carrying on such united action. The trustees appointed pursuant to said Acts are statutory trustees and not officers of the Court.

Weil v. President, etc., of Manhattan Co., 275 N. Y. 238, 242, 243.

When Special Term of the Supreme Court made the final order approving the plan and appointing the trustees, the essential purpose and reason for the emergency statutes had been satisfied.

There is no provision in either the Schackno Act or the Mortgage Commission Act for the retention of jurisdiction by Special Term of the Supreme Court of a proceeding for the reorganization of a mortgage issue after the entry of the final order approving the plan and until the liquidation of the trust estate and the termination of the trust. This is conclusively evidenced by the subsequent amendment of the Mortgage Commission Act and the incorporation therein of Section 14a which directs the trustees to file annual accounts *with the Court who appointed them, and not in the proceeding wherein they were appointed*. If the respondents' contentions were correct and the proceedings were deemed to continue there would have been no necessity for said Section 14a, and the special proceedings in the Supreme Court therein provided for with respect to said accounting. In the absence of statutory provision, the trustees appointed in a reorganization proceeding could only account in an action commenced for that purpose.

The respondents' argument (pp. 7-10) that there was an available remedy in the reorganization proceeding wherein they could obtain a summary adjudication of a controversy between the petitioner and the respondents with respect to a contract of sale, receives no support whatsoever from

the cases cited by them wherein the res was in the possession and control of the Court making the decree or order, either through receivership, foreclosure, partition, incompetency, infancy, bankruptcy or other appropriate proceeding, where the sale was made by the Court through its duly appointed officer, the Court having jurisdiction over the property it was selling and retaining jurisdiction in a summary way to pass upon the sale and to enforce its decree against the purchaser if necessary.

CONCLUSION.

It is respectfully submitted that this petition should be granted.

Respectfully submitted,

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Attorney for Petitioner.